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JUN - 7 2006

In re Application of:
SMITH, Roger Q.
Serial No.: 09/153,621
Filed: September 15, 1998
For: HEAVY-DUTY AUDIO EQUIPMENT

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a response to the petition filed on June 1, 2005, to withdraw the holding of abandonment of the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely file an appeal brief. A Notice of Appeal was filed October 11, 2004. A Notice of Abandonment was mailed June 27, 2005.

The petitioner asserts that a timely response was mailed to the United States Patent & Trademark Office (USPTO) on December 10, 2004. To support this assertion, petitioner has provided a copy of the Appeal Brief bearing a certificate of mailing under 37 CFR § 1.8(a) showing a date of mailing of December 10, 2004.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it was mailed in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered

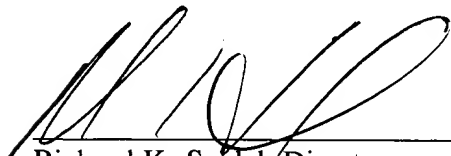
timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition meets the conditions of 37 CFR § 1.8(b) to establish the previous timely filing of the response.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the Appeal Brief. From there, it will be returned to the examiner for further prosecution.

Any inquiry regarding this decision should be directed to Jose G. Dees, Special Program Examiner, at (571) 272-1569.



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